

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jaimie Vernon	Team: Squad #4	CCRB Case #: 201504201	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/23/2015 5:30 PM	Location of Incident: § 87(2)(b)	Precinct: 42	18 Mo. SOL 11/23/2016	EO SOL 11/23/2016	
Date/Time CV Reported Sat, 05/23/2015 6:00 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 05/23/2015 6:00 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Justice Byrd	13400	952519	042 PCT
2. POM Steven Dejesussmith	12283	952651	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Steven Dejesussmith	Abuse: PO Steven Dejesus-Smith entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POM Justice Byrd	Abuse: PO Justice Byrd entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C.POM Steven Dejesussmith	Abuse: PO Steven Dejesus-Smith refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)

Case Summary

On May 23rd, 2015, the CCRB received the complaint of § 87(2)(b) made via the Call Processing System. On May 26th, § 87(2)(b) provided a phone statement which she later verified (Board Review 01). § 87(2)(b) provided a follow-up statement in person on July 9th, 2015 (Board Review 02). In both statements, § 87(2)(b) alleged the following:

Earlier on May 23rd, § 87(2)(b) was in her home on the § 87(2)(b). § 87(2)(b) is the homeowner of a two-family residence. She rents out the basement to a male tenant named § 87(2)(b), § 87(2)(b)'s daughter, § 87(2)(b) was also home at the time, along with § 87(2)(b)'s friend, § 87(2)(b) who had slept over the previous night.

Around 5:30PM, § 87(2)(b) was alerted by § 87(2)(b) that two officers approached him as he sat on the front porch, smoking a cigarette. The officers explained that they had received a 911 call coming from inside the house, and asked § 87(2)(b) who he was and if he lived at the residence. § 87(2)(b) alarmed, asked the younger § 87(2)(b) and § 87(2)(b) if either of them had called 911, and both young women denied having done so. Startled by the presence of police at her home, § 87(2)(b) decided to go downstairs and speak with the officers.

When § 87(2)(b) descended the stairs, followed by § 87(2)(b) and § 87(2)(b) she found PO Steven Dejesus-Smith and PO Gary Byrd of the 42nd Precinct standing inside the vestibule, just a few feet away from her (**Allegations A and B**). § 87(2)(b) had not given the officers permission to enter and did not believe that § 87(2)(b) had, either.

§ 87(2)(b) asked the officers why they were in her house, and they explained that they received a 911 call from inside the house. They refused to elaborate further. § 87(2)(b) informed them that no one in the house had called 911, but the officers insisted that they did receive such a call. § 87(2)(b) told them that they had no right to be in her house without a warrant, and repeatedly asked the officers to leave. PO Dejesus-Smith refused to leave, instead asking if the officers could enter § 87(2)(b)'s apartment. § 87(2)(b) refused to allow them to, and asked again for the officers to leave. PO Byrd turned around, apparently complying, but PO Dejesus-Smith turned him around and said, "We're staying".

§ 87(2)(b) then asked both officers for their names and their shield numbers. PO Byrd readily provided his verbally, and § 87(2)(b) wrote them down. PO Dejesus-Smith, however, did not provide either his name or his shield number verbally. While his nameplate was visible, he had a black band obscuring his shield number. When § 87(2)(b) told him that she could not read his shield number, PO Dejesus-Smith simply told her, "Oh well", and made no effort to remove the band (**Allegation C**). § 87(2)(b) wrote down PO Dejesus-Smith's name, but was unable to obtain his shield number.

Shortly after § 87(2)(b) took down the officers' information, the officers left on their own accord. No one was arrested or summonsed as a result of the incident.

§ 87(2)(b) and § 87(2)(b) both provided statements corroborating § 87(2)(b)'s allegations (Board Review 03 and Board Review 04).

Mediation, Civil and Criminal Histories

§ 87(2)(b) had accepted mediation, and her case was originally sent to the Mediation Division. However, it was returned to the Investigations Division when both PO Dejesus-Smith and PO Byrd rejected mediation.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

§ 87(2)(b) has made one previous CCRB complaint, § 87(2)(b)

This is the first and only CCRB complaint for PO Byrd, who has been a member of the service for three years. PO Dejesus-Smith has also been a member of the service for 3 years, and there are no substantiated allegations made against him. § 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: PO Steven Dejesus-Smith entered § 87(2)(b)

Allegation B – Abuse of Authority: PO Justice Byrd entered § 87(2)(b)

It is undisputed that PO Dejesus-Smith and PO Byrd entered § 87(2)(b)'s home of § 87(2)(b) in response to a 911 call. Both § 87(2)(b) and § 87(2)(b) along with § 87(2)(b) stated that PO Dejesus-Smith and PO Byrd told them that the officers had received a 911 call made from inside the home, but did not elaborate further. They were made aware by § 87(2)(b)'s tenant, § 87(2)(b) that the officers had first approached him as he sat on the front porch. The officers asked § 87(2)(b) for his name and address, wanting to know if he lived at the residence. The officers also explained that they had received a call, which led § 87(2)(b) to go into the § 87(2)(b) residence to ask § 87(2)(b) if anyone had called 911. § 87(2)(b) then went downstairs, finding PO Dejesus-Smith and PO Byrd already inside her vestibule (Board Review 01, Board Review 02, Board Review 03, and Board Review 04).

In their respective CCRB statements, both PO Dejesus-Smith and PO Byrd explained that they received a call from Central stating that a woman who preferred to remain anonymous called 911 to report that a black man sitting outside § 87(2)(b) was bragging about being wanted for a robbery in South Carolina. She reported that the man also said that he had a gun on him. With this information in mind, they responded to the scene, and found a male matching the description sitting on the front porch. They asked the man for his name and where he lived, and both described him as “compliant”. The man told the officers that he lived in that residence, and when the officers asked him for his ID, he told them that he needed to go to his room to retrieve it. The officers allowed the man to go inside the house, and they followed him in (Board Review 06 and Board Review 07).

The SPRINT associated with that 911 call, event number § 87(2)(b) confirms the information the officers stated. An anonymous complainant reported at about 4:49PM that a bald black male weighing between 250-300lbs and standing either 6'1" or 6'2" was wanted for a robbery in South Carolina and was possibly armed. The caller gave the man's name as "§ 87(2)(b)" and reported that he was sitting outside § 87(2)(b) bragging about the crime and about having a gun. § 87(2)(f)
§ 87(2)(b) The job was disposed of as "90Y", or Uncooperative Complainant (Board Review 08).

PO Byrd indicated that § 87(2)(b), § 87(2)(b)'s tenant, fit the description given in the report exactly, and that he provided his full name as § 87(2)(b)" when the officers asked for his name (Board Review 06). PO Dejesus-Smith did not recall what description or name of the report provided, if any (Board Review 05).

It is also undisputed that while PO Dejesus-Smith and PO Byrd entered § 87(2)(b), they remained in the vestibule area and did not venture further into the house. All parties interviewed described the first floor of the house as having no fixtures associated with living quarters, including a kitchen, bedrooms, or a bathroom. The floor contains nothing apart from the door leading to § 87(2)(b)'s basement quarters and the flight of stairs leading to the § 87(2)(b) residence on the second floor. § 87(2)(b) provided a rough sketch of her first floor showing its composition (Board Review 09).

In *People v. McBride* (2010; 14 N.Y.3d 440), the New York State Court of Appeals ruled that a warrantless entry into a home to affect an arrest is acceptable only under certain exigent circumstances, including: 1) the gravity of the offense of which the suspect is suspected; 2) if the suspect is reasonably believed to be armed; 3) the officers have probable cause to believe the suspect committed the crime; and 4) if there is a likelihood that the suspect would escape if not swiftly apprehended (Board Review 10).

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Allegation C – Abuse of Authority: PO Steven Dejesus-Smith refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) alleged that when she asked PO Dejesus-Smith and PO Byrd for their names and shield numbers after PO Dejesus-Smith repeatedly refused to leave her home, PO Byrd readily provided his information verbally, but PO Dejesus-Smith refused to provide either verbally. § 87(2)(b) observed his nameplate and wrote his name down on a notepad, but saw that his shield was obscured by a black band. When she told him she could not read his shield number, PO Dejesus-Smith replied, “Oh well” (Board Review 01).

§ 87(2)(b) and § 87(2)(b) heard § 87(2)(b) request from each officer his name and shield number and corroborated § 87(2)(b)'s assertion that PO Byrd was cooperative with her request whereas PO Dejesus-Smith was not. Both women also stated that they did not hear PO Dejesus-Smith verbally provide his name or his shield (Board Review 03 and Board Review 04).

Furthermore, all women characterized PO Dejesus-Smith as “rude” and “disrespectful”, raising his voice at § 87(2)(b) during the incident and refusing to leave the home when asked multiple times. They all admit that § 87(2)(b) herself raised her voice at the officers, and that she and PO Dejesus-Smith argued for several minutes. In particular, § 87(2)(b) admitted to calling PO Dejesus-Smith “fat” in anger (Board Review 01 and Board Review 02).

Both PO Byrd and PO Dejesus-Smith stated that both officers provided their names and their shield numbers verbally to § 87(2)(b). Both officers denied that PO Dejesus-Smith had anything obscuring his shield number during the incident (Board Review 06 and Board Review 07). PO Dejesus-Smith admitted that PO Byrd provided his name and shield number before he did.

Both officers also characterized § 87(2)(b) as “irate”, stating that she yelled at the officers throughout the incident, asked them to leave multiple times, and refused to listen to the officers when they tried to explain why they were there. PO Dejesus-Smith claimed that § 87(2)(b) called him a “fat fuck”. Both officers described themselves as calm and professional when dealing with § 87(2)(b).

§ 87(2)(g)

In § 87(2)(b)'s original DiRAD message, left hours after the incident, she provided both PO Byrd's name and shield number, 13400, indicating that she had received them during the incident. However, she only provided PO Dejesus-Smith's name, alleging that PO Dejesus-Smith refused to provide his shield number (Board Review 12). In her original phone statement, § 87(2)(b) again provided PO Byrd's name and shield number, but only PO Dejesus-Smith's name, § 87(2)(g).

§ 87(2)(b) (Board Review 01).

In her follow-up statement, § 87(2)(b) clarified that when she requested the officers' names and shield numbers, the officers had been standing side-by-side, a few feet ahead of the front door (Board Review 02). Both officers corroborated this, explaining that they stood side-by-side near the front door during the whole incident (Board Review 06 and Board Review 07).

§ 87(2)(g)

§ 87(2)(g) [Redacted]
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§ 87(2)(g) [Redacted]
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NYPD Patrol Guide Procedure 203-09, regarding Public Contact, stipulates that officers must clearly either state or otherwise provide their shield number upon request, and to allow the civilian ample time to note their information (Board Review 11).

§ 87(2)(g) [Redacted]
[Redacted]

Pod: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date